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No. 71-285

In the Supreme Court of the United States

OCTOBER TERM, 1971

ELVA G. ANDERSON, ET AL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Claims (Pet. App.) is reported at 436 F. 2d 1008. The court's findings of fact and conclusion of law, which are not yet reported, are attached as an appendix to this brief.

JURISDICTION

The judgment of the Court of Claims was entered on January 22, 1971. The Anderson plaintiffs' petition for a rehearing was denied on May 28, 1971. The petition for a writ of certiorari was filed on August 25, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims correctly held that Congress' subsequent amendments of the 1954 Klamath Termination Act did not constitute a taking of property and, consequently, that, for purposes of petitioners' entitlement to compensation, valuation should be based on the date of actual sale or other disposition of the property involved rather than upon the time of disposition originally contemplated by the 1954 Act.

STATUTES INVOLVED

The relevant statutes are set forth in full in the findings of fact of the Court of Claims (App., *infra*, p. 11–52).

STATEMENT

This case involves a challenge to the government's disposition of Indian lands in Oregon pursuant to the Klamath Termination Act of August 13, 1954, 68 Stat. 718, as amended, 25 U.S.C. 564 *et seq.* Specifically, that Act, in setting forth the termination process, including the disposition of the proceeds of tribal property among those tribal members who elected to withdraw, provided:

> Sec. 6(b). It is the intention of the Congress that all of the actions required by sections 5 and 6 of this Act shall be completed at the earliest practicable time and in no event later than four years from the date of this Act.

In fact, the final disposition was postponed by Congress in subsequent legislation until August 13, 1960. Act of August 14, 1957, 71 Stat. 347, and was further

postponed until August 13, 1961, by the Act of August 23, 1958, 72 Stat. 816.

To avoid repetition, we adopt the statement of facts set forth in the opinion of the Court of Claims (Pet. App. "Opinion Below"; 436 F. 2d at 1010–1014).

Petitioners contend that in postponing final disposition of tribal property from 1958 to 1961, the United States has taken property without payment of just compensation in violation of the Fifth Amendment (Pet. 15–18). They further assert that the date of taking was 1958 (the end of the four-year period for completion established by Section 6(b) of the 1954 Act) with respect to all property disposed of for the benefit of the withdrawing members pursuant to the Act, rather than the subsequent dates on which the property was actually sold or "taken" by the United States pursuant to the termination procedure (Pet. 10–11, 18). The Court of Claims concluded (Pet. App. "Opinion Below"; 436 F. 2d at 1022):

> 1. There was no eminent domain taking by the defendant of the Antelope Desert Unit or of the fringe or miscellaneous units, or of personal property. If a claim of breach of fiduciary duty (through failure to obtain a good price) is made as to these properties, the valuation dates should be May 3, 1960 for the Desert unit (when it was sold to a private corporation) and the various dates of sale for the other assets.
>
> 2. The ten unsold "sustained-yield" units of the Klamath Forest were taken by the defendant by eminent domain on April 15, 1961, and should be valued as of that date.

3. The Klamath Marsh was taken by the defendant by eminent domain on September 7, 1960, and should be valued as of that date.

The court, accordingly, remanded the case to the trial commissioner for further proceedings.

ARGUMENT

The decision of the Court of Claims is correct, presents no conflict with decisions of this Court or any other federal court, and does not warrant review by this Court.

1. The decision below is not final; the case has been remanded for a valuation trial concerning both the property admittedly taken by the United States and the property which, under the Court of Claims' decision, might be the subject of claims against the United States for breach of fiduciary duty through failure to obtain a good price (Pet. App. "Opinion Below"; 436 F. 2d at 1014, 1015–1016). Thus, it cannot now be ascertained whether any actual harm has befallen these petitioners.

2. The Court of Claims, upon whose opinion we rely, correctly held that Congress' enactment of the 1954 Klamath Termination Act—including the "intention" expressed in Section 6(b), *supra*—should not be construed either as a contract or as a vesting of property rights, for "That rule would in effect freeze Congress into a position once taken and deny it the right to accommodate its Indian enactments, within a short time, to changed circumstances" (Pet. App. "Opinion Below"; 436 F. 2d at 1021). As explained immediately below, a substantial development of fur-

ther information led to the statutory changes involved here.

3. Petitioners' claim that they have been harmed to the benefit of the general public, and particularly the local Oregon timber industry, will not bear analysis. As the Court of Claims noted (Pet. App. "Opinion Below"; 436 F. 2d at 1011), in 1954 it was assumed that only a small number of members of the Klamath Tribe would elect to withdraw, probably not more than 5 percent. This would have required the sale or disposition of only a small part of the Klamath tribal assets to raise funds to pay these withdrawing members their shares of the tribal assets in cash. The Stanford Research Institute report of April 1956 indicated that a much larger number of members might elect to withdraw, from 50 percent to 70 percent (Finding 9, App. *infra*, pp. 24–25). The Sanford Research Institute report recognized that pursuant to the 1954 Act, this would require placing a very large amount of timber on the market within a very short period of time, about one year, and that this would result in depressing the timber market to the detriment of both the Indians and the non-Indians in the Klamath Basin. At the election in April 1958, 77 percent of the members elected to withdraw, thus requiring that about 3.5 billion board feet of timber be placed on the market in an area in which the mill capacity was about 300 million board feet per year (Pet. App. "Opinion Below"; 436 F. 2d at 1011, n. 7; Finding 10, App. *infra*, pp. 25–28).

Congress responded to these new facts by an Act in 1957 which temporarily deferred sales of the timber,

and an additional Act in 1958 which protected against too rapid sales of timber which would depress the timber market and destroy the environment in the entire Klamath area. The period for concluding the transactions was extended by the 1957 and 1958 Acts from four years to seven years (Pet. App. "Opinion Below"; 436 F. 2d at 1011–1012). Petitioners contend that, by the expression of intention contained in Section 6(b) of the 1954 Act, Congress had rendered itself helpless to change the termination program when additional facts were brought to its attention showing a need for change. The contention is without merit as shown in the opinion of the Court of Claims (Pet. App. "Opinion Below," 436 F. 2d at 1021–1022).[1]

4. The date of valuation should be, as the court concluded, the actual date of taking, where a taking occurred under the procedures of termination, and the actual date of sale with respect to the property sold under the same procedures, and not the 1958 date sought by petitioners.

The Act of August 23, 1958, 72 Stat. 816, amended the 1954 Act by adding Section 28. Subsection (d) of

[1] Nor is there merit to petitioners' contention that they were treated differently than the remaining members (Pet. 18). The selection of the tribal property to be conveyed to the trustees for the remaining members and the selection of tribal property to be disposed of for the benefit of the withdrawing members were both made as of July 1, 1958, based upon "appraised value" as determined by Western Timber Services. Subsequent to July 1, 1958, both received any benefits, such as price increases, timber growth, etc., and both assumed the risks of falling prices, damage to timber from fire, insect infestation, etc. The petitioners did not lose beneficial use of the land as of August 13, 1958. (See Findings 24–30, App. *infra*, pp. 50–52.)

that Section provided that if any sustained-yield units remained unsold on April 1, 1961, "the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed $90,000,000, * * *." Such a proclamation was published April 15, 1961 (26 Fed. Reg. 3251 with correction at 3444). The Court of Claims properly found that April 15, 1961, was therefore the date of taking. There is no justification for adopting a different date. The lands included in the ten unsold units, along with other property, had been selected for the benefit of the withdrawing members as of July 1, 1958. From that date to the date of transfer of title, they were managed for the benefit of the group of withdrawing members who received the income from the lands during that period. The group of withdrawing members will be entitled to the growth of timber between the date of inventory (timber cruise) by Western Timber Services and April 15, 1961. Their claim that they did not receive interest for this period, or part of it, is without merit.[2]

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[2] Payment for these units in the amount of $68,716,691 was placed in the Treasury to the credit of the group of withdrawing members. The petitioners indicate (Pet. 11, 18) that they did not receive payments for their shares of the tribal assets until late in 1961. The payment for the ten unsold units, together with other miscellaneous income, was distributed to the withdrawing members in a per capita payment of $43,124.71

The Antelope Desert Unit was sold for $1,642,182 at public sale for the benefit of the withdrawing members, subject to a sustained-yield covenant (Finding 19(b), App. *infra*, p. 48). The Court of Claims correctly found there was no taking under the power of eminent domain and that, if there is any liability on the part of the United States, it is on the theory of a breach of fiduciary relationship arising out of the manner in which the property was offered for sale (Pet. App. "opinion below," 436 F. 2d at 1016). It found the pertinent date to be May 3, 1960, the date of the deed to the purchaser (Pet. App. "opinion below" 436 F. 2d at 1022). Similarly, the Court of Claims correctly concluded that there was no taking of the fringe and miscellaneous units or of the personal property,

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made during the month of April 1961. Klamath Ex. 14, Final Status and Evaluation Report, p. 3. Payment was thus made promptly. A small payment of $66.26 was made in August 1961. Some of the withdrawing members did not receive their entire shares in cash because they had previously applied their shares toward the purchase of tribal property being offered for sale.

all of which were offered at public sale without restriction as to use, and that the pertinent dates of a claim based upon an alleged breach of fiduciary duty would be the various dates of sales (Pet. App. "opinion below," 436 F. 2d at 1022).

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1971.

APPENDIX

In the United States Court of Claims

(Decided January 22, 1971)

No. 125–61

KLAMATH AND MODOC TRIBES AND YAHOOSKIN BAND OF INDIANS, ET AL. v. THE UNITED STATES

No. 87–62

ELVA G. ANDERSON, ET AL. v. THE UNITED STATES

* * * * *

* * * * *

FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner Louis Spector, and the briefs and arguments of counsel, makes findings of fact as follows:

1. (a) The petitions in these two actions were filed pursuant to the provisions of 28 U.S.C. § 1491 and 28 U.S.C. § 1505 (1964).

(b) Plaintiffs in docket No. 125–61 consist of:

(1) The Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, suing on their own behalf, and as the representative of their members or former members (or their heirs, executors, administrators, or assigns), individually and collectively, including (a) members or former members who elected, or for whom an election was made, to "withdraw" (as that term is hereinafter employed), and (b) members or former members who did not elect, or for whom no election was made, to "withdraw";

(2) one thousand three hundred eighty-two (1,382) individual Indians who elected, or for whom an election was made, to withdraw, each suing on his own behalf and as representative of members or former members (or their heirs, executors, administrators, or assigns), who elected to withdraw or for whom an election was made to withdraw; and

(3) two Indians who did not elect, or for whom no election was made, to withdraw, each suing on his own behalf and as the representative of the members or former members (or their heirs, executors, administrators, or assigns) who did not elect or for whom no election was made to withdraw.

(c) Plaintiffs in docket No. 87–62 consist of one hundred fifty (150) individual Indians who elected to withdraw, each suing on his own behalf, and as representative of the Indians who elected to withdraw and as representative of the class of Indians who elected to withdraw, and who objected to the amendments to the Act of August 13, 1954, as later detailed.

(d) By order of April 24, 1964, the court ordered the consolidation of the cases for all further proceedings. It also ordered counsel in docket No. 125–61 to represent the parties named as plaintiffs in the first amended petition, and all parties similarly situated. It authorized plaintiffs in docket No. 87–62 to amend their petition to make their case a class action, and ordered counsel in that case to represent the parties named as plaintiffs in the petition, and all parties similarly situated.

(e) At the pretrial conference held on September 19, 1967, the following issues were set for separate trial:

(1) Dates of taking of the Klamath Marsh and Klamath Forest, including water and mineral rights;

(2) whether there was a taking or other Government liability for the disposal by the defendant of the following categories of property: Antelope Desert Unit, fringe units, miscellaneous real property, personal property, and hunting and fishing rights. The issues as to water and hunting and fishing rights, were to apply to the land retained by the remaining members as well as to the land allegedly taken or disposed of by the defendant.

2. By the Treaty of October 14, 1864, 16 Stat. 707, the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians ceded to the United States all right, title and claim to all the country claimed by them, except for a reservation set aside as their residence, and which is commonly known as the "Klamath Reservation." By virtue of the Treaty, the United States had legal title to the reservation, and the tribe had the beneficial interest therein.

3. In November 1953, the tribe still had a beneficial interest in approximately 86[illegible],125 acres of reservation lands, which consisted of 693,997 acres of commercial and noncommercial forests, 127,938 acres of open range, 23,421 acres of

marshland, 14,524 acres of bush or wasteland and 1,245 acres of farmland. The principal asset was the forest, which consisted mainly of ponderosa and sugar pine. Since 1913, timber had been sold on a sustained yield basis under which only annual or somewhat longer increments of growth were cut. The tribe had been realizing an annual gross income of about $2,000,000 in the most recent years from these sales.

4. From time to time during the 1930's and 1940's, pressures were exerted from both within and without the tribe for termination of federal supervision over the property of the tribe and its members. Within the tribe, two determined factions favored termination, but were in disagreement as to the manner and time in which such termination should be effected. One faction, led by the tribal governing body, insisted on retention of the tribal entity and tribal rights. The other faction, led by one Wade Crawford, a member of the tribe and of its executive committee, favored the immediate creation of individual Indian rights, dissolution of the tribe, and immediate distribution of the tribal assets to the individual Indians. Prior to the enactment of the 1954 Termination Act (hereinafter quoted in full), representatives of both of these factions had agreed that the termination legislation then pending before Congress should be amended to provide for (1) an appraisal of the tribal assets, (2) an opportunity for each member to determine whether to withdraw from the tribe and have his interest converted into money, or to remain in the tribe and participate in a tribal enterprise, and (3) a selection and sale of those tribal assets which, if sold on the basis of the appraised value, would generate sufficient funds to pay the withdrawing members their shares in the tribal property. These principal points of agreement were submitted by a representative of the Interior Department to the House Subcommittee on Indian Affairs, which adopted them as amendments to the proposed termination legislation. They subsequently became part of the 1954 Act, as hereinafter set forth.

5. On August 1, 1953, the Congress adopted House Concurrent Resolution 108, 67 Stat. B132, which in pertinent part reads as follows:

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, * * * all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: * * * the Klamath Tribe of Oregon * * *. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

6. On January 4, 1954, the Assistant Secretary of Interior submitted to Congress a bill to terminate within 4 years federal supervision of the Klamath Tribe and its members. Subsequently, on August 13, 1954, Congress enacted P.L. 587, Act of August 13, 1954, ch. 732, 68 Stat. 718, which reads as follows:

AN ACT

To provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the purpose of this Act is to provide for the termination of Federal supervision over the trust and restricted property of the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and the

Yahooskin Band of Snake Indians, and of the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of said Indians, and for a termination of Federal services furnished such Indians because of their status as Indians.

SEC. 2. For the purposes of this Act:

(a) "Tribe" means the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians.

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" means real property, interests therein, or improvements thereon, and include water rights.

(d) "Tribal property" means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States.

(e) "Adult" means a member of the tribe who has attained the age of twenty-one years.

SEC. 3. At midnight of the date of enactment of this Act the roll of the tribe shall be closed and no child born thereafter shall be eligible for enrollment: *Provided*, That the tribe shall have a period of six months from the date of this Act in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on the date of this Act, which shall be published in the Federal Register. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within ninety days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of this Act.

SEC. 4. Upon publication in the Federal Register of the final roll as provided in section 3 of this Act, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance

before the transfer of title to such tribal property as provided in section 6 of this Act without the approval of the Secretary. Any contract made in violation of this section shall be null and void.

SEC. 5. (a) The Secretary is authorized and directed to select and retain by contract, at the earliest practicable time after the enactment of this Act and after consultation with the tribe at a general meeting called for that purpose, the services of qualified management specialists who shall—

(1) cause an appraisal to be made, within not more than twelve months after their employment, or as soon thereafter as practicable, of all tribal property showing its fair market value by practicable logging or other appropriate economic units;

(2) give each adult member of the tribe, immediately after the appraisal of the tribal property, an opportunity to elect for himself, and, in the case of a head of a family, for the members of the family who are minors, to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in the tribal management plan to be prepared pursuant to paragraph (5) of this subsection;

(3) determine and select the portion of the tribal property which if sold at the appraised value would provide sufficient funds to pay the members who elect to have their interests converted into money, arrange for the sale of such property, and distribute the proceeds of sale among the members entitled thereto: *Provided*, That whenever funds have accumulated in the amount of $200,000 or more, such funds shall be distributed pro rata to the members who elected to take distribution of their individual shares, and thereafter similar pro rata distribution shall be made whenever funds have accumulated in the amount of $200,000 or more until all of the property set aside for sale shall have been sold and the proceeds distributed: *Provided further*, That any such member shall have the right to purchase any part of such property for not less than the highest offer received by competitive bid, and to apply toward the purchase price all or any part of the sum due him from the conversion of his interest in tribal property: *Provided further*, That when determining and selecting the portion of the tribal property to be sold, due consideration shall be given to the use of such property for grazing purposes by the members of both groups of the tribe;

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(4) cause such studies and reports to be made as may be deemed necessary or desirable by the tribe or by the Secretary in connection with the termination of Federal supervision as provided for in this Act; and

(5) cause a plan to be prepared in form and content satisfactory to the tribe and to the Secretary for the management of tribal property through a trustee, corporation, or other legal entity.

(b) Such amounts of Klamath tribal funds as may be required for the purposes of this section shall be available for expenditure by the Secretary: *Provided*, That the expenses incident to the sale of property and the distribution of proceeds of sale pursuant to paragraph (3) of this subsection shall be charged exclusively to the interests of the members who withdraw from the tribe, and the expenses incurred under paragraphs (4) and (5) of this subsection shall be charged exclusively to the interests of the members who remain in the tribe, and all other expenses under this section shall be charged to the interests of both groups of members.

SEC. 6. (a) The Secretary is authorized and directed to execute any conveyancing instrument that is necessary or appropriate to convey title to tribal property to be sold in accordance with the provisions of paragraph (3) of subsection (a) of section 5 of this Act, and to transfer title to all other tribal property to a trustee, corporation, or other legal entity in accordance with the plan prepared pursuant to paragraph (5) of subsection (a) of section 5 of this Act.

(b) It is the intention of the Congress that all of the actions required by sections 5 and 6 of this Act shall be completed at the earliest practicable time and in no event later than four years from the date of this Act.

(c) Members of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe: *Provided*, That nothing shall prevent them from sharing in the proceeds of tribal claims against the United States.

SEC. 7. The Secretary is authorized and directed, as soon as practicable after the passage of this Act, to pay from such funds as are deposited to the credit of the tribe in the Treasury of the United States, $250 to each member of the tribe on the rolls of the tribe on the date of this Act. Any other person whose application for enrollment on the rolls of the tribe is subsequently approved, pursuant to the terms of section 3 hereof, shall, after enrollment, be paid a like sum of $250: *Provided*, That such payments shall be made first from the capital reserve

fund created by the Act of August 28, 1937 (25 U.S.C., Sec. 530).

SEC. 8. (a) The Secretary is authorized and directed to transfer within four years from the date of this Act to each member of the tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) All restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor) are hereby removed four years after the date of this Act, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrances: *Provided*, That the provisions of this subsection shall not apply to subsurface rights in such lands, and the Secretary is directed to transfer such subsurface rights to one or more trustees designated by him for management for a period not less than ten years. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance four years or more after the date of this Act shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted four years from the date of this Act;

(2) upon request of any of the owners, and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(d) The Secretary is hereby authorized to approve—

(1) the exchange of trust or restricted land between the tribe and any of its members;

(2) the sale by the tribe of tribal property to individual members of the tribe; and

(3) the exchange of tribal property for real property in fee status. Title to all real property included in any sale or exchange as provided in this subsection shall be conveyed in fee simple.

SEC. 9. (a) The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribe who die six months or more after the date of this Act.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months or more after the date of this Act.

(c) Section 5 of the Act of June 1, 1938 (52 Stat. 605), is hereby repealed.

SEC. 10. The Secretary is authorized, in his discretion, to transfer to the tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribe will derive benefit.

SEC. 11. No property distributed under the provisions of this Act shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That, for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation or other legal entity.

SEC. 12. Sections 2, 3, 4, 5, and 6 of the Act of August 28, 1937 (50 Stat. 872, 873), and section 2(a) of the Act of August 7, 1939 (53 Stat. 1253), are repealed effective on the date of the transfer of title to tribal property to a trustee, corporation, or other legal entity pursuant to section 6 of this Act. All loans made from the reimbursable loan fund established by section 2 of the Act of August 28, 1937 (50 Stat. 872), and all other loans made from Klamath tribal funds, including loans of livestock made by the tribe repayable in kind, shall be transferred to the tribe for collection in accordance with the terms thereof.

SEC. 13. (a) That part of section 5 of the Act of August 13, 1914 (35 Stat. 687; 43 U.S.C. 499), which relates to the transfer of the care, operation, and maintenance of reclamation works to water users associations or irrigation districts shall be applicable to the irrigation works on the Klamath Reservation.

(b) Effective on the first day of the calendar year beginning after the date of the proclamation provided for in section 18 of this Act, the deferment of the assessment and collection of construction costs provided for in the first proviso of the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), shall terminate with respect to any lands within irrigation projects on the Klamath Reservation. The Secretary shall cause the first lien against such lands created by the Act of March 7, 1928 (45 Stat. 200, 210), to be filed of record in the appropriate county office.

(c) There is hereby authorized to be appropriated out of any funds in the Treasury not otherwise appropriated the sum of $89,212 for payment to the Klamath Tribe with interest at 4 per centum annually as reimbursement for tribal funds used for irrigation construction operation and maintenance benefiting nontribal lands on the Klamath Reservation, such interest being computed from the dates of disbursement of such funds from the United States Treasury.

(d) The Secretary is authorized to adjust, eliminate, or cancel all or any part of reimbursable irrigation operation and maintenance costs and reimbursable irrigation construction costs chargeable against Indian owned lands that are subject to the provisions of this Act, and all or any part of assessments heretofore or hereafter imposed on account of such costs, when he determines that the collection thereof would be inequitable or would result in undue hardship on the Indian owner of the land, or that the administrative costs of collection would probably equal or exceed the amount collected.

(e) Nothing contained in any other section of this Act shall affect in any way the laws applicable to irrigation projects on the Klamath Reservation.

SEC. 14. (a) Nothing in this Act shall abrogate any water rights of the tribe and its members, and the laws of the State of Oregon with respect to the abandonment of water rights by nonuse shall not apply to the tribe and its members until fifteen years after the date of the proclamation issued pursuant to section 18 of this Act.

(b) Nothing in this Act shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty.

SEC. 15. Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of this Act, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate.

SEC. 16. Pending the completion of the property dispositions provided for in this Act, the funds now on deposit, or hereafter deposited, in the United States Treasury to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary.

SEC. 17. The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of this Act, or to establish a marketable and recordable title to any property disposed of pursuant to this Act.

SEC. 18. (a) Upon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians and, except as otherwise provided in this Act, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Nothing in this Act shall affect the status of the members of the tribe as citizens of the United States.

SEC. 19. Effective on the date of the proclamation provided for in section 18 of this Act, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are hereby terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this Act are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and

bylaws that is consistent with this Act without the participation of the Secretary or other officer of the United States.

SEC. 20. The Secretary is authorized to set off against any indebtedness payable to the tribe or to the United States by an individual member of the tribe or payable to the United States by the tribe, any funds payable to such individual or tribe under this Act and to deposit the amounts set off to the credit of the tribe or the United States as the case may be.

SEC. 21. Nothing contained in this Act shall deprive the tribe or its constituent parts of any right, privilege, or benefit granted by the Act of August 13, 1946 (60 Stat. 1049).

SEC. 22. Nothing in this Act shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency and may transfer such functions, in whole or in part to a State agency with the consent of such agency and the other party or parties to such instrument.

SEC. 23. The Secretary is authorized to issue rules or regulations necessary to effectuate the purposes of this Act, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets.

SEC. 24. All Acts or parts of Acts inconsistent with this Act are hereby repealed insofar as they affect the tribe or its members. Effective on the first day of the fiscal year beginning after the date of the proclamation provided for in section 18 of this Act, section 2 of the Act of August 19, 1949 (63 Stat. 621, ch. 468) shall become inapplicable to the unrecouped balance of funds expended in cooperation with the school board of Klamath County, Oregon, pursuant to said Act.

SEC. 25. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 26. Prior to the issuance of a proclamation in accordance with the provisions of section 18 of this Act, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of

education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Approved August 13, 1954.

7. As required by § 3 of said Act of August 13, 1954, ch. 732, § 3, 68 Stat. 718, the tribal roll was closed effective midnight, August 13, 1954, and the final roll was published in the *Federal Register* on November 21, 1957. 22 Fed. Reg. 9303, *et seq.* (1957).

8. Pursuant to § 5(a) of the Act of August 13, 1954, ch. 732 § 5(a), the Secretary of Interior, in May 1955, entered into a contract with three management specialists. They in turn engaged the services of the Stanford Research Institute to develop guidelines for selecting economic units, determine equitable ways of apportioning tribal assets among tribal members, assist in formulating a plan to stimulate the tribal economy, and consider appropriate methods for managing the residual tribal assets.

9. In a preliminary report submitted to the management specialists in April 1956, the Stanford Research Institute made the following observations:

> * * * It also appears that fully 50 percent of the Tribal members—and possibly a considerably larger number, up to 70 percent—may elect to withdraw and take their pro rata shares in cash.
>
> It is apparent that a large proportion of the Reservation timberlands will necessarily become the source of funds to pay withdrawing members who desire cash for their pro rata shares of the Tribal assets. This fact has very serious implications, as it could mean the liquidation within a very few years of a substantial portion of

one of the finest and most extensive ponderosa pine forests in the nation. Such liquidation, particularly as it would involve forced sale within the short time remaining between the appraisal completion date and April 13, 1958, is not in the best interests of the withdrawing members, the remaining members, the regional economy, or the nation as a whole.

By contrast, at the time the Act of August 13, 1954, was enacted, it had been assumed that only a few members of the tribe would elect to withdraw.

10. In May 1956, the management specialists submitted a report to the Secretary of Interior in which they listed the following conclusions and recommendations:

1. Section 5 of Public Law 587 [the Act of August 13, 1954] is a radical departure from any method previously considered for converting tribal assets into cash. It became a part of the law as a last-minute amendment during the closing days of the 83rd Congress. Neither County nor State officials had an opportunity to examine the final provisions of Section 5 and to comment thereon, prior to the passage of the Act.
2. Section 5 of the Law provides for the forced sales of tribal resources. Present estimates indicate that the provisions of this section will require the sale of approximately 2,660 million board feet of sawtimber during a period of less than one year. These sales, taking place in an economic area in which the present sawmill production is now approximately 300 million board feet per year, will undoubtedly glut the local market, bringing greatly reduced stumpage prices. These reduced prices will apply not only to timber sold for those tribal members electing to withdraw from the tribe, but also to timber sold by members electing to remain in the tribe to participate in a management program. The same reductions of stumpage prices would likewise extend to both Federal and privately-owned timber sold from other forest properties in the economic area.
3. Only large operators and governmental agencies can afford to practice sustained yield management in relatively slow growing timber such as found on the Klamath Indian Reservation. Because of the tremendous investment required to purchase a tract sufficiently large to practice sustained yield management, few purchasers of economic timber units could afford

to invest in such a venture. Most purchasers would be forced to liquidate their investment in timber at the earliest possible time. This cut-out-and-get-out policy would result in serious injury to the economy of the Klamath Basin.

4. Since the forest laws of the State of Oregon require only that a few small seed trees per acre be left following cutting, the multiple-use benefits of the Klamath Reservation forest would be jeopardized if these lands were to be sold in accordance with Section 5 of Public Law 587. The watershed values of the Klamath Reservation forest alone should warrant measures being taken to prevent this forest from being cut indiscriminately.
5. The Klamath Indians do not have an adequate management background to wisely manage their own resources. "On the job" training of a board of directors has no place in the management of a multi-million dollar corporation. To manage the organization under a trustee is no more than shifting the present trust responsibility from the Federal Government to some other entity.
6. The Federal Government's present trust responsibility includes the responsibility for providing an orderly transition from the present management to the management which will become effective after the Federal trust responsibility has been terminated. To allow this transition to proceed in a manner that would prove detrimental to the tribe as a whole might result in claims being brought against the government for losses sustained by the members of the Klamath Tribe.

With the foregoing conclusions in mind, the Klamath Management Specialists have considered many methods for terminating the Federal government's present trust responsibility for the management of the Klamath Tribal property. In addition to the preliminary consideration that the provisions of the Law should be carried out without amending Section 5, many proposals for basic amendments to this section have been considered. After studying the basic qualities of each proposal the Management Specialists have concluded that only one method for terminating the Federal government's present trust responsibility will protect the interests of both the members of the Tribe and the economy of the community in which they live. This method is the purchase of the Klamath tribal property by the Federal Government.

Accordingly, under provisions of Section 19 of their contract with the Secretary of the Interior, the Klamath Management Specialists hereby recommend that the Congress of the United States amend Section 5 of Public Law 587 to provide for the purchase of the Klamath Tribal resources by the Federal government. This proposal for purchase by the Federal government is discussed in detail in Section V of this report. Should lack of time prevent Congress from making the recommended amendment during the present session of Congress, it is recommended that a stopgap amendment of Section 5 be provided. This stopgap amendment should eliminate all of the present portions of Section 5 following the appraisal of the tribal property Sec. 5(a)(1), and substitute therefor provisions that will authorize and require the Management Specialists to prepare and submit to the Congress, through the Secretary of the Interior, detailed plans for effecting the orderly termination of the Federal government's present trust responsibilities over the tribal resources.

In their report, the management specialists made the following additional observations:

Several of the indirect benefits that are realized from the sustained yield management of a forest property are also jeopardized by the provisions of Public Law 587. The influence which the Klamath Reservation forest has in stabilizing the flow of streams throughout the year should, in itself, warrant measures being taken to prevent this timber from being cut to the minimum specifications of the state law. Approximately 303,000 acres of irrigated farm lands are dependent on streams that head on the forest slopes of the Klamath Basin. Further, the maximum development of water power on the Klamath River cannot be realized without the protection of its headwaters. A large part of the extensive water resource of the Klamath Basin originates in the many large springs found on reservation lands. To allow the promiscuous cutting of the Klamath Reservation forest is to jeopardize the farm production and the water power developments dependent on the watershed protection provided by these forests.

Other serious problems in forest management would also be generated. The accumulations of logging slash that would result from the cutting of large volumes of timber during a relatively short period of time would increase the hazards from fires and from insect attacks. These increased hazards would be compounded by the

generally poorer slash disposal and snag falling required by operators under state forest laws than have been required under the timber cutting contracts administered by the Bureau of Indian Affairs in the past. These widespread areas of increased hazards, coupled with the greatly increased and uncontrolled logging activities, could bring a serious increase in the annual loss from forest fires.

The satisfactory establishment of reproduction after cutting is another forest management problem which may become much more serious if the Klamath Reservation forests are cut to the minimum requirements of the Oregon State laws. Mr. Harold Weaver, Area Forester of the Bureau of Indian Affairs, has stated the following concerning this problem:

> "We have always considered Klamath a problem area with respect to establishment of reproduction because of the critical soil and moisture factors and particularly because of the various shrub species that compete seriously with ponderosa pine reproduction. When the forest is opened through selective logging various shrubs such as bitterbrush, manzanita and ceanothus are most apt to take over all available growing space in the absence of good pine seed years. In such event establishment of reproduction may require a very long period of years. Despite the leaving of an excellent reserve stand, a recent cruise of the Klamath disclosed that approximately 20 percent of the cut over lands are not satisfactorily stocked with reproduction. On some of these lands the cutting occurred as long as 30 or more years ago. With the harvesting of the reserved trees under the minimum provisions of the Oregon law nothing will be left on such areas but a few seed trees per acre and a nearly solid stand of brush. In the circumstances the leaving of a few poles or seed trees as required by ORS 527.080 will not assure regeneration of the forest."

11. On January 7, 1957, the Assistant Secretary of Interior, Hatfield Chilson, submitted to Congress a proposed bill to amend the Act of August 13, 1954. In his letter of transmittal, the Assistant Secretary stated:

> Enclosed herewith is a draft of a proposed bill to amend the act terminating Federal supervision over the Klamath Indian Tribe.
>
> We recommend that the proposed bill be referred to

the appropriate committee for consideration, and we recommend that it be enacted.

The purpose of the bill is to do four things: (1) Delay any sales of tribal timberlands until Congress has had a further opportunity to determine whether all or any part of the lands should be acquired by the Federal or State Government for public conservation purposes, or whether other alternative steps may be needed to protect the economy and to preserve good conservation practices in the region; (2) prevent forced sales of Klamath tribal timberlands in quantities and at times that will unreasonably depress the market; (3) provide for Federal payment of the costs of the termination program; and (4) make several technical amendments to the law, the need for which has been disclosed by our experience during the past 2½ years.

In order to accomplish the first purpose, the bill provides that no sales of tribal property shall be made before the end of the 1st session of the 85th Congress, and if during that time Congress authorizes public acquisition of the timberlands by a State or Federal agency the sale to the public agency must be on the terms specified by Congress rather than under the procedure specified in the existing law.

The problem is how to mitigate the effect on the economy of the area of a partial or complete liquidation of the Klamath Forest. When the bill that became the Klamath Termination Act was presented to Congress by executive communication on January 4, 1954, we pointed out that there is a conflict between the interest of the Indians in obtaining the maximum value from the forest as a private capital asset, and the interest of the United States in maintaining the forest under sustained-yield management for the benefit of all of the people in the region. That is, the Indians might get a better return on their investment if the forest were liquidated and the proceeds invested in some other form, but the liquidation of the forest would injure the general public in the area. Inasmuch as the United States may not require private property to be devoted to a public purpose without adequate compensation, we pointed out that the right of the Indians to liquidate a part of the forest is a private property right that should not be denied them after the Federal trust over their property is terminated. When the bill was under consideration by Congress, it was well understood that the only practical way to insure continued management of the forest on sustained-yield principles, in the interest of the general public as dis-

tinguished from the interest of the Indians as private citizens, was some form of public acquisition if the Indians concluded that it was to their best interest to liquidate all or a part of the forest.

Subsequent studies by the management specialists who were retained in accordance with the provisions of the act indicate clearly why some of the Indians believe that it would be in their best interest, economically, to liquidate their shares of the tribal estate by withdrawing from the tribe and by investing the proceeds in some other form. Although the appraisal of the tribal forest has not yet been completed, the management specialists have estimated that on the basis of the probable retail appraised value the Indians can expect to get less than 2-percent return on their capital if the forest remains in sustained-yield management. They could get a considerably higher return if their capital were invested conservatively in Government or corporate bonds, or in the so-called blue-chip common stocks.

The conservation problem was raised when Congress considered the original bill in 1954, and it has been under constant consideration since then. Whether the forest should be maintained intact as a conservation measure for the public good is primarily a matter for Congress to determine. If the answer is in the affirmative, it is clear that the Indians as private property owners should not be forced by law to maintain the forest for the public good. Inasmuch as it is the public interest that is involved, some form of public ownership seems to be the only reasonable approach. We therefore recommend that the sale of any part of the forest should be stopped for a reasonable time in order that Congress may consider further whether public acquisition by the Federal or State Government will be authorized. We believe that a delay until the end of the 1st session of the 85th Congress is a reasonable time, in view of the 2½ years that have already elapsed. Some definite time limitation for the delay period is necessary in order to prevent the Indians as private property owners from being deprived of ordinary control and use of their property solely because of the public conservation interest.

In order to accomplish the second purpose, the bill provides that if public acquisition of the forest is not authorized and sales of tribal property are necessary in order to pay the members who withdraw from the tribe, the sales shall be arranged at times and in quantities that will not unreasonably depress the market. The bill also extends the time for completing such sales from 4 to 7

years after the date of the original act, which was August 13, 1954, and provides that if it develops that sales within such time limitation will bring inadequate prices in the light of appraisals, a report of the facts shall be submitted to Congress for such corrective action as Congress thinks advisable. Assuming that no sales are commenced before the summer of 1957, which would be the effect of the first amendment discussed above, this means that any sales of tribal property that are necessary will be made during the 4-year period between the summer of 1957 and August 13, 1961.

In order to accomplish the third purpose, the bill provides for reimbursing the tribe, up to a maximum of $1,100,000, for expenses that are incurred in carrying out the termination program and that are approved by the Secretary. Congress authorized similar action in connection with the Menominee termination program in Wisconsin, and there is no reason for treating the Klamath Indians differently.

In order to accomplish the fourth purpose, the bill makes a number of changes in the existing law. Although the changes are primarily technical in nature, they are of considerable practical importance.

The first relates to the procedure for permitting individual Indians to withdraw from the tribe. The present law permits the withdrawal of minors or incompetents only when they are a part of the family of an adult member of the tribe who elects to withdraw. This means that no opportunity is provided for withdrawing a minor when his parents are divorced and he is in the custody of a non-Klamath parent, or when the minor is in the legal custody of a Klamath parent but live with his non-Klamath parent, or when the minor is an orphan and lives with a non-Klamath foster parent or in a State institution, or when the minor has been abandoned by his Klamath parents and lives with a relative or friend who has no legal responsibility for his custody. There are many other variations of the problem. There is also no provision for withdrawing from the tribe the estate of a deceased member. We believe that some provisions should be made for considering the interests of such persons and for withdrawing them from the tribe if they would be benefited. As it is difficult to spell out in detail the many varying circumstances when the choice should be placed in one or the other of the natural parents, in an adopted parent, in a foster parent, in a guardian, in a relative, in a State welfare official, or in some other person, the bill permits the Secretary to designate the person who is best

able to represent the interests of the member involved and gives the person designated the right to withdraw such member from the tribe if withdrawal would be for his benefit.

The designation of a person to determine the withdrawal of a minor or incompetent will not give that person control over the property of the minor or incompetent. Section 15 of the present law requires the Secretary to protect the rights of such persons before removing restrictions on the property by arranging for the judicial appointment of a guardian or by some other appropriate means which might include, for example, the establishment of a private trust. A private trust could be used if the fees and costs of guardianship proceedings are excessive.

The second technical change relates to the time for permitting the individual Indian to exercise an election to withdraw from the tribe. The present act requires that the opportunity to elect be given to each adult member of the tribe immediately after the appraisal of the property has been completed. We believe that the appraisal will not be completed until the report of the contract appraisers has been adopted by the management specialists, and until it has been submitted to and approved by the Secretary in accordance with the contract between the management specialists and the Secretary. Such approval was required by the Secretary pursuant to his rulemaking power under the act. The validity of this interpretation has been questioned, however, and in order to remove any doubt about the matter the bill specifically provides that the opportunity to elect to withdraw shall be given to the Indians after the appraisal is approved by the Secretary.

The contention has been advanced that the election to withdraw will create a vested right to have a proportionate share of the tribal property sold on the open market, that the vesting of such right might prevent the enactment of further legislation to preserve the forest, and that the election to withdraw should therefore be postponed until after Congress has decided the fate of the forest. We strongly oppose any such postponement. The right to elect to withdraw is as much a vested right at the present time as would be the right to withdraw after the election is made. Moreover, Congress needs to know how many of the tribal members want to withdraw before it can determine how much, if any, of the forest should be acquired for public conservation purposes; and the amendment recommended to carry out the first pur-

pose of the bill, discussed above, will clearly permit such acquisition by a public agency according to a procedure or price fixed by Congress rather than under the procedure specified in existing law, if Congress wishes to legislate to that effect. There is therefore no need to postpone the determination of the number of Indians who want to withdraw in order to permit Congress to protect the forest, and there are cogent reasons for not delaying.

The only other reason heretofore offered for delay is to allow the tribe to control the rate of withdrawals and to require the withdrawing members to take less than their proportionate shares of the tribal assets. The right to withdraw and be paid a proportionate share of the tribal assets is an essential part of the present law, and it should not be changed.

The third change relates to the Indian preference to purchase any tribal land that is offered for sale. The change gives the preference right to the tribe and to the members who stay in the tribe, as well as to the members who withdrew from the tribe. The preference is presently restricted to the latter group. The change also makes it clear that the preference may be exercised by an Indian only for his own account and not as an agent for others, and that the preference must be exercised only for entire parcels as they are offered for sale.

The fourth technical change changes the definition of "adult" to conform to the law of the place where the person resides.

The fifth technical change permits the Secretary to perform, on request prior to termination, for the owner of the entire interest in a tract of allotted land the same services with respect to sale that he is authorized to perform for the owners of fractionated interests in an allotment.

The sixth technical change relates to the termination of the trust or restricted status of interests in allotted land on the Klamath Reservation that are owned by non-Klamath Indians. Those are interests acquired by inheritance. After the termination program for the Klamath Indians has been completed, there will be no practical administrative procedure for administering undivided interests in Klamath allotments that may have been inherited by non-Klamath Indians.

The seventh technical change makes it clear that the provisions for terminating restrictions on individually owned Indian land apply both to allotted and to purchased land.

An eighth technical amendment makes it clear that tribal timber sales may continue to be made as authorized

by existing law until Federal control over the timber has been terminated. We believe that such authority now exists, but the authority has been questioned by some members of the tribe, and the question can most easily be resolved by the inclusion in the bill of a clear statement to that effect. In view of the proposed extension of the terminal program until 1961, timber sales during the intervening period are important to the members of the tribe because the customary per capita payments are made from timber sales income.

The management specialists who were retained in accordance with the provisions of the 1954 act have advised us that they concur in the recommendation that the proposed legislation be enacted.

The Bureau of the Budget has advised us that there is no objection to the submission of this proposed legislation to the Congress.

12. On August 14, 1957, Congress enacted P.L. 85–132, Act of August 14, 1957, 71 Stat. 347, which reads as follows:

AN ACT

To authorize the United States to defray the cost of assisting the Klamath Tribe of Indians to prepare for termination of Federal supervision, to defer sales of tribal property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (68 Stat. 718), is amended by adding at the end thereof the following new section:

"SEC. 27. Notwithstanding any other provisions of this Act, no sales of tribal property shall be made pursuant to paragraph (3) of subsection (a) of section 5, or section 6 of this Act prior to the adjournment of the second session of the Eighty-fifth Congress."

(b) Subsection (b) of section 5 of such Act is amended to read as follows:

"(b) Such amounts of Klamath tribal funds as may be required for the purposes of this section shall be available for expenditure by the Secretary. In order to reimburse the tribe, in part, for expenditure of such tribal funds as the Secretary deems necessary for the purposes of carrying out the requirements of this section, there is

hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, an amount equal to one-half of such expenditures from tribal funds, or the sum of $550,000, whichever is the lesser amount.".

(c) Subsection (b) of section 6 of such Act is amended by striking out "four years" and inserting in lieu thereof "six years".

(d) Subsection 5 (a), paragraph (2), of the Act is amended to read as follows:

"(2) immediately after the appraisal of the tribal property and approval of the appraisal by the Secretary, give to each member whose name appears on the final roll of the tribe an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in the tribal management plan to be prepared pursuant to paragraph (5) of this subsection; in the case of members who are minors, persons declared incompetent by judicial proceedings, or deceased, the opportunity to make such election on their behalf shall be given to the person designated by the Secretary as the person best able to represent the interests of such member: *Provided, however*, That any member, or any heir or any devisee of any deceased member, for whom the Secretary has so designated a representative may (on his own behalf, through his natural guardian, or next friend) within one hundred and twenty days after receipt of written notice of such secretarial designation, contest the secretarial designation in any naturalization court for the area in which such member resides, by filing of a petition therein requesting designation of a named person other than the secretarial designee, and the burden shall thereupon devolve upon the Secretary to show cause why the member-designated representative should not represent the interests of such member, and the decision of such court shall be final and conclusive;".

(e) Subsection 5 (a), paragraph (3), of the Act is amended by deleting the second proviso and by inserting in lieu thereof the following: "*Provided further*, That any person whose name appears on the final roll of the tribe, or a guardian on behalf of any such person who is a minor or an incompetent, shall have the right to purchase, for his or its own account but not as an agent for others, any of such property in lots as offered for sale for not less than the highest offer received by competi-

tive bid; any individual Indian purchaser may apply toward the purchase price all or any part of the sum due him from the conversion of his interest in tribal property; and if more than one right is exercised to purchase the same property pursuant to this proviso the property shall be sold to one of such persons on the basis of competitive bids:".

(f) Subsection 2 (e) of the Act is amended to read as follows: "'Adult' means a person who is an adult according to the law of the place of his residence."

(g) Subsection 5 (a), paragraph 5, of the Act is amended by deleting "tribe" and by inserting in lieu thereof "members who elect to remain in the tribe".

(h) Subsection 8 (c) of the Act is amended by inserting after "on land owned by" the words "one or by".

(i) Subsection 8 (b) of the Act is amended by deleting the language that precedes the proviso and by inserting in lieu thereof "All restrictions on the sale or encumbrance of trust or restricted interests in land, wherever located, owned by members of the tribe (including allottees, purchasers, heirs, and devisees, either adult or minor), and on trust or restricted interests in land within the Klamath Indian Reservation, regardless of ownership, are hereby removed four years after the date of this Act, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrances:".

(j) Section 15 of the Act is amended by changing the period at the end thereof to a comma and by adding "without application from the member, including but not limited to the creation of a trust of such member's property with a trustee selected by the Secretary, or the purchase by the Secretary of an annuity for such member: *Provided, however,* That no member shall be declared to be in need of assistance in conducting his affairs unless the Secretary determines that such member does not have sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to such member and the income and proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof: *Provided further,* That any member determined by the Secretary to be in need of assistance in conducting his affairs may, within one hundred and twenty days after receipt of written notice of such secretarial determination, contest the secretarial determination in any naturalization court for the area in

which said member resides by filing therein a petition having that purpose; the burden shall thereupon devolve upon the Secretary to show cause why such member should not conduct his own affairs, and the decision of such court shall be final and conclusive with respect to the affected member's conduct of his affairs.

SEC. 2. Nothing in the Act of August 13, 1954 (68 Stat. 718), shall affect the authority to make timber sales otherwise authorized by law prior to the termination of Federal control over such timber.

Approved August 14, 1957.

13. (a) Pursuant to § 5(a)(1) of the Act of August 13, 1954, ch. 732, § 5(a)(1), 68 Stat. 718, the management specialists caused an appraisal of the tribal property to be made by Western Timber Services under a contract approved by the Secretary of Interior on February 17, 1956. The appraisal report was submitted to the management specialists under the date of October 21, 1957. A supplemental report was submitted on January 31, 1958. The Secretary of Interior accepted the inventory and appraisal of the tribal property on February 28, 1958.

(b) The appraisal report listed the following property units:

Type of Unit	*Number of Units*
Timber	95
Grazing	22
Marsh	2
Farm	3
Agency Buildings	4
Miscellaneous*	10
Total	136

*Includes eight cemetery tracts which were conveyed without compensation to a cemetery association pursuant to § 9 of the Act of August 23, 1958, § 9, 72 Stat. 819.

(c) The "realization value" was defined in the appraisal report as follows:

> (3) "Realization Value." "Realization Value" is the estimated amount which may be realized if the economic unit is sold under the terms of Public Law 587, as amended. In estimating realization value, the Appraisers have assumed that the conditions set forth within the paragraphs immediately below will

prevail in the sale of the economic unit under the terms of Public Law 587, as amended:

(a) The sales will be made in a period of 21 months commencing September 1, 1958.

(b) Economic units having an aggregate appraised value of seventy per cent of the appraised value of the entire property of the Klamath Tribe will be sold.

(c) All sales of timber will be for cash, except that approximately three per cent of the Indians withdrawing will exercise the option to apply their prorata share of the sale proceeds to the purchase of timberlands.

(d) Each Indian will have the option to purchase any economic unit for cash at the highest outside bid.

(e) Each bidder will be required to submit with his bid a cash deposit in the amount of ten per cent of his bid.

(f) Each successful bidder will be required to pay in cash the full amount of his bid, less deposit, within no more than 90 days (or somewhat shorter periods with respect to small economic units) from the date on which he is notified of the acceptance of his bid.

(g) A conveyance will be made to the successful bidder within 30 days of the date on which he pays the full amount of his bid.

(h) The purchaser of the timber will be under no obligation to operate the unit purchased on a sustained-yield basis.

(i) The Secretary of Interior will have the option to reject any bid which is lower than the realization value of the economic unit as estimated in the Appraisal Report.

(j) Bidding will be by oral auction, or by sealed bids, or by both oral auction and sealed bids, according to the method which experience in the conduct of the sales and market conditions indicates will bring the highest bids.

(k) The contents of the Appraisal Report will be available to prospective bidders for examination and study at Klamath Falls, Oregon.

(l) Small economic units may be grouped together and large units broken up into smaller tracts, so that the tracts offered for sale will be of the size or sizes which experience indicates will bring the highest bids.

(m) Any further amendments to Public Law 587, as amended by the 85th Congress, 1st Session, will have no adverse effect on buyer interest.

(n) The sales will be widely publicized, including advertising as follows:

(1) Upon completion of the Appraisal and prior to the advertisement of sales of particular economic units, there will be published in newspapers of national circulation and in trade publications and circularized among timber operators and interested financial organizations a general description of the nature and scope of the proposed sales.

(2) Prior to the time when sales will be made, there will be advertised for sale, subject to the effect of amendments to Public Law 587 which may be enacted by the 85th Congress, 2d Session, particular economic units. Such advertising will be published in newspapers of national circulation and in trade publications and circularized among timber operators and interested financial organizations.

(3) During the period when sales will be made, particular economic units will be advertised in the manner set forth in subparagraph (2) above.

(o) There will be no substantial change in general economic conditions in the United States prior to the end of the sale period.

(d) With respect to those units as to which standing timber constituted the principal element of value, the appraisal report set forth four "values" which were designated as "Appraised Value," "Market Value," "Sustained Yield Value," and "Realization Value." The valuation date for the first three values was February 28, 1957, and for the last value, October 21, 1957.

(e) With respect to the remaining units, other than the cemetery units, the appraisal report set out one or more values, which were designated as "Appraised Value," "Market Value," "Sustained Yield Value," "Realization Value," or "Fair Market Value." No value was assigned to the cemetery units.

14. Pursuant to § 5(a)(2) of the Act of August 13, 1954,

ch. 732, § 5(a)(2), 68 Stat. 718, the management specialists, under date of March 7, 1958, sent all tribal members a notice of the election, an election form, data on the appraisal of tribal assets and on the financial effects of withdrawing from or remaining in the tribe, and a summary of a tentative management plan for those electing to remain in the tribe. The completed election form was to be returned by April 21, 1958. In the election, 1,660 members (77.825 percent of a total of 2,133) elected to withdraw, while the remaining 473 either elected to remain in the tribe, or failed to return their ballots, in which case they were deemed not to have elected to withdraw from the tribe.

15. (a) The selections of property to be sold to pay the withdrawing Indians, the determination of the value of their interests, and of the property to be conveyed to a trustee for the benefit of the remaining Indians, were made as of July 1, 1958. Some adjustments in the selections were made after that date, however, the final adjustment being made on December 14, 1959.

(b) The property selected for sale constituted 77.825 percent of the value of the total tribal estate, as determined and selected by the United States. It consisted of about 78 percent of the Klamath Forest, an area known as the "Klamath Marsh," and certain fringe areas, consisting of farm and grazing land and timberlands not susceptible to sustained yield use.

(c) The remaining property constituted 22.175 percent of the value of the total tribal estate, as determined and selected by the United States after consultation with some of the remaining Indians. This property was included in the tribal management plan, and title thereto was subsequently transferred by the Secretary of Interior to a private trustee.

16. Hearings on additional amendments to the Act of August 13, 1954, *supra*, were held by the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs on October 2–4, 1957, and February 3–7, 1958. Following those hearings, the Act of August 13, 1954, *supra*, was in several respects further amended by the Act of August 23, 1958, 72 Stat. 816:

AN ACT

To amend the Act terminating Federal supervision over the Klamath Indian Tribe by providing in the alternative for private or Federal acquisition of the part of the tribal forest that must be sold, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Act of August 13, 1954 (68 Stat. 718), is amended by adding a new section 28 as follows:

"SEC. 28. Notwithstanding the provisions of sections 5 and 6 of the Act of August 13, 1954 (68 Stat. 718), and all Acts amendatory thereof—

"(a) The tribal lands that comprise the Klamath Indian Forest, and the tribal lands that comprise the Klamath Marsh, shall be designated by the Secretary of the Interior and the Secretary of Agriculture, jointly.

"(b) The portion of the Klamath Indian Forest that is selected for sale pursuant to subsection 5(a)(3) of this Act to pay members who withdraw from the tribe shall be offered for sale by the Secretary of the Interior in appropriate units, on the basis of competitive bids, to any purchaser or purchasers who agree to manage the forest lands as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber according to plans to be prepared and submitted by them for approval and inclusion in the conveyancing instruments in accordance with specifications and requirements referred to in the invitations for bids: *Provided*, That no sale shall be for a price that is less than the realization value of the units involved determined as provided in subsection (c) of this section. The terms and conditions of the sales shall be prescribed by the Secretary. The specifications and minimum requirements to be included in the invitations for bids, and the determination of appropriate units for sale, shall be developed and made jointly by the Secretary of the Interior and the Secretary of Agriculture. Such plans when prepared by the purchaser shall include provisions for the conservation of soil and water resources as well as for the management of the timber resources as hereinbefore set forth in this section. Such plans shall be satisfactory to and have the approval of the Secretary of Agriculture as complying with the minimum standards included in said specifications and requirements before the prospective purchaser shall be entitled to

have his bid considered by the Secretary of the Interior and the failure on the part of the purchaser to prepare and submit a satisfactory plan to the Secretary of Agriculture shall constitute grounds for rejection of such bid. Such plans shall be incorporated as conditions in the conveyancing instruments executed by the Secretary and shall be binding on the grantee and all successors in interest. The conveyancing instruments shall provide for a forfeiture and a reversion of title to the lands to the United States, not in trust for or subject to Indian use, in the event of a breach of such conditions. The purchase price paid by the grantee shall be deemed to represent the full appraised fair market value of the lands, undiminished by the right of reversion retained by the United States in a nontrust status, and the retention of such right of reversion shall not be the basis for any claim against the United States. The Secretary of Agriculture shall be responsible for enforcing such conditions. Upon any reversion of title pursuant to this subsection, the lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

"(c) Within sixty days after this section becomes effective the Secretary of the Interior shall contract by negotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to subsection 5(a)(2) of this Act, as amended. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are hereby made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is hereby authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal,

each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the termination date specified in subsection 6(b) of this Act, as amended. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian forest designated pursuant to subsection 28(a) shall be made under the provisions of this Act prior to April 1, 1959.

"(d) If all of the forest units offered for sale in accordance with subsection (b) of this section are not sold before April 1, 1961, the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed $90,000,000, which shall be the maximum amount payable for lands acquired by the United States pursuant to this Act. Compensation for the forest lands so taken shall be the realization value of the lands determined as provided in subsection (c) of this section, unless a different amount is provided by law enacted prior to the proclamation of the Secretary of Agriculture. Appropriation of funds for that purpose is hereby authorized. Payment shall be made as soon as possible after the proclamation of the Secretary of Agriculture. Such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended. Any of the forest units that are offered for sale and that are not sold or taken pursuant to subsection (b) or (d) of this section shall be subject to sale without limitation on use in accordance with the provisions of section 5 of this Act.

"(e) If at any time any of the tribal lands that comprise the Klamath Indian Forest and that are retained by the tribe are offered for sale other than to members of the tribe, such lands shall first be offered for sale to the Secretary of Agriculture, who shall be given a period of twelve months after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary of Agriculture, and if such lands are reoffered for sale they shall first be reoffered to the Secretary of Agriculture. The Secretary of Agriculture is hereby authorized to purchase such lands subject to such terms and conditions as to the use thereof as he may deem appropriate, and any lands so acquired shall thereupon become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

"(f) The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to subsection 5(a)(3) of this Act to pay members who withdraw from the tribe. Title to such lands is hereby taken in the name of the United States, effective April 1, 1961. Such lands are designated as the Klamath Forest National Wildlife Refuge, which shall be administered in accordance with the law applicable to areas acquired pursuant to section 4 of the Act of March 16, 1934 (48 Stat. 451), as amended or supplemented. Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are hereby authorized to be appropriated for that purpose.

"(g) Any person whose name appears on the final roll of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the Klamath Forest National Wildlife Refuge.

"(h) If title to any of the lands comprising the Klamath Indian Forest is taken by the United States, the administration of any outstanding timber sales contracts thereon entered into by the Secretary of the Interior as trustee for the Klamath Indians shall be administered by the Secretary of Agriculture.

"(i) All sales of tribal lands pursuant to subsection (b) of this section or pursuant to section 5 of this Act on which roads are located shall be made subject to the right of the United States and its assigns to maintain and use such roads."

SEC. 2. Section 4 of the Act of August 13, 1954, is amended by adding thereto a new sentence reading thus: "Property which this section makes subject to inheritance or bequest and which is inherited or bequeathed after August 13, 1954, and prior to the transfer of title to tribal property as provided in section 6 of this Act shall not be subject to State or Federal inheritance, estate, legacy, or succession taxes."

SEC. 3. No funds distributed pursuant to section 5 of the Act of August 13, 1954, as amended, to members who withdraw from the tribe shall be paid to any person as compensation for services pertaining to the enactment of said Act or amendments thereto and any person making or receiving such payments shall be guilty of a misdemeanor and shall be imprisoned for not more than six months and fined not more than $500.

SEC. 4. The Secretary of the Interior is directed to terminate the contract between him and the management specialists by giving immediately the sixty-day notice required by paragraph 18 of such contract. When the contract is terminated, all of the functions of the management specialists under section 5 of the Act of August 13, 1954, as amended, shall be performed by the Secretary.

SEC. 5. Nothing in this Act shall in any way modify or repeal the provisions of subsection 5(a) of the Act of August 13, 1954 (68 Stat. 718), as amended, providing for and requiring members of the Klamath Tribe to elect to withdraw from or remain in the tribe, following the appraisal of the tribal property.

SEC. 6. The first proviso of subsection 5(a)(3) of the Act of August 13, 1954 (68 Stat. 718), relating to distributions in $200,000 installments, is repealed.

SEC. 7. The second proviso of subsection 5(a)(3) of said Act, as amended, relating to Indian preference rights, is further amended by deleting "any individual Indian purchaser may apply toward the purchase price

all or any part of the sum due him from the conversion of his interest in tribal property" and by inserting in lieu thereof "any individual Indian purchaser who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsections 28(b), 28(d), and 28(f) of this Act, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property".

SEC. 8. The Act of August 13, 1954 (68 Stat. 718), is amended by adding at the end of subsection 5(a)(5) the following sentence: "If no plan that is satisfactory both to the members who elect to remain in the tribe and to the Secretary has been prepared six months before the time limit provided in subsection 6(b) of this Act, as amended, the Secretary shall adopt a plan for managing the tribal property, subject to the provisions of section 15 of this Act, as amended."

SEC. 9. Except as provided below the provisions of the Act of August 13, 1954 (68 Stat. 718), as amended, shall not apply to cemeteries within the reservation. The Secretary is hereby authorized and directed to transfer title to such properties to any organization authorized by the tribe and approved by him. In the event such an organization is not formed by the tribe within eighteen months following enactment of this Act, the Secretary is directed to perfect the organization of a nonprofit entity empowered to accept title and maintain said cemeteries, any costs involved to be subject to the provisions of section 5(b) of said Act of August 13, 1954, as amended.

SEC. 10. Subsection (b) of section 6 of the Act of August 13, 1954 (68 Stat. 718), as amended, is further amended by striking out "six years" and inserting in lieu thereof "seven years".

SEC. 11. Subsection 8(b) of the Act of August 13, 1954 (68 Stat. 718), as amended, is further amended by changing the colon to a period and by deleting the following language: "*Provided*, That the provisions of this subsection shall not apply to subsurface rights in such lands, and the Secretary is directed to transfer such subsurface rights to one or more trustees designated by him for management for a period not less than ten years."

Approved August 23, 1958.

17. (a) Pursuant to § 23(c) of the Act of August 23, 1958, 72 Stat. 817, the Secretary of Interior, by contract dated

October 22, 1958, engaged three firms to make review appraisals. On December 15, 1958, the three review appraisers met in an effort to agree on values so as to submit one report to the Secretary of Interior, as required by their contract. An agreement could not be reached, and each appraiser submitted separate reports to the Secretary of Interior on December 30 and 31, 1958.

(b) The results of the three appraisals are as follows:

Hammon, Jensen & Wallen	$91,965,680
Bigley & Feiss	82,356,760
Marshall & Stevens	95,136,635

(c) The average of the three review values is the following:

95 Timber Units	$89,308,787
2 Marsh Units	510,905
Average	$89,819,692

18. (a) Pursuant to § 28(a) of the Act of August 23, 1958, 72 Stat. 816, the tribal lands comprising the Klamath Forest and the Klamath Marsh were jointly designated by the Secretary of Interior and Secretary of Agriculture on December 2 and 12, 1958.

(b) Pursuant to § 28(b) of the Act of August 23, 1958, 72 Stat. 816, the portion of the Klamath Forest set aside to pay the withdrawing Indians was divided into 11 sustained yield units susceptible to sustained yield management and the boundaries of each unit were jointly designated by the action of the Assistant Secretary of Interior on March 24, 1959, and of the Assistant Secretary of Agriculture on April 3, 1959.

(c) Pursuant to § 28(b) of the Act of August 23, 1958, 72 Stat. 816, on the dates indicated in the immediately preceding finding, minimum specifications for the type of covenant a purchaser of a sustained yield unit would be required to execute were adopted by the Assistant Secretary of Interior and by the Assistant Secretary of Agriculture.

19. (a) The 11 sustained yield units were advertised for sale as authorized by § 28(b) of the Act of August 23, 1958, 72 Stat. 816. The dates of advertising and opening of bids were as follows:

Sustained Yield Unit	Date of Advertising	Date of Opening of Bids
Antelope Desert North Marsh Modoc Point Sykan	April 20, 1959	January 20, 1960
Chiloquin Yainax Black Hills	July 1, 1959	April 1, 1960
Yamsey Mountain Skellock Saddle Mountain South Calimus	November 1, 1959	August 1, 1960

In addition, on March 1, 1960, the North Marsh, Modoc Point and Sykan Units were readvertised, the bids to be opened December 1, 1960. Notice of the sales was included in a general prospectus prepared under the date of April 20, 1959. The prospectus included the notices of readvertisement of the three units mentioned above, and a map showing the boundaries of the sustained yield units was attached thereto.

(b) Following the advertising, prospective bidders submitted a number of sustained yield management plans to the Department of Agriculture as provided by § 28(b) of the Act of August 23, 1958, 72 Stat. 816. Several of the plans were approved; some were rejected and some were withdrawn. The only bid received at the sales was from the Crown Zellerbach Corporation for the Antelope Desert in the amount of $1,642,182. The amount actually paid, however, was $1,626,016.31 because a credit was allowed for timber killed by fire during the period of advertising. The bid was accepted by the Department of Interior on January 28, 1960, and a deed covering the unit was executed under the date of May 3, 1960. A deed correcting the description of the lands comprised by the unit was executed under the date of April 11, 1961.

(c) On April 1, 1961, all of the sustained yield units, except the Antelope Desert Unit, remained unsold. As provided by § 28(d) of the Act of August 23, 1958, 72 Stat. 817, by a Proclamation of April 13, 1961 (28 Fed. Reg. 3251 with correction at 3444 (1961)), the Secretary of Agriculture transferred the remaining units to the National Forest System. The realization value of the 10 units, which was

determined by taking the average of the three review appraisals, was $68,716,691, which amount was deposited in the Treasury of the United States for the group of withdrawing Indians.

20. (a) In 1959, Congress changed the date for federal acquisition of the Klamath Marsh, amending § 28(f) of the Act of August 23, 1958, 72 Stat. 818, by the Act of September 9, 1959, 73 Stat. 477, as follows:

AN ACT

To amend the Klamath Termination Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to permit an immediate payment of the purchase price of the Klamath Marsh, the title to which was taken by the United States by the Act of August 23, 1958 (72 Stat. 816), and thereby make possible partial distribution of funds to the Klamath Indians who have elected to withdraw from the tribe, which will lessen the need for making interim loans to such Indians, subsection 28(f) of the Act of August 13, 1954, as amended (72 Stat. 816), is hereby amended by changing the effective date for the taking of title by the United States from April 1, 1961, to the earliest date after September 30, 1959, when the Secretary of the Interior determines that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended (16 U.S.C. 718).

Approved September 9, 1959.

(b) By a Proclamation of September 7, 1960 (25 Fed. Reg. 8833), of the Acting Secretary of Interior, that portion of the lands designated as the Klamath Marsh, and not conveyed to the trustee for the remaining members, was transferred to the United States pursuant to § 28(f) of the Act of August 23, 1958, 72 Stat. 818, as amended by the Act of September 9, 1959, 73 Stat. 477, to be administered in accordance with the law applicable to areas acquired pursuant to § 4 of the Act of March 16, 1934, 48 Stat. 451, as amended or supplemented, 16 U.S.C. 718d.

(c) The lands were designated as the Klamath Forest National Wildlife Refuge and contained 14,641.02 acres. The consideration was $476,401, which was the average of the

three review appraisals. It was deposited in the Treasury of the United States for the benefit of the group of withdrawing Indians.

21. Prior to the termination legislation, the tribe owned the beneficial interest in considerable property in addition to the timberlands included in the 11 sustained yield units, the Klamath Marsh, and the lands conveyed to the trustee for the remaining Indians. This property consisted of timberlands not susceptible to sustained yield management (commonly referred to as "fringe units"), grazing lands, farmlands, buildings, miscellaneous tracts, and personal property. The remaining property (exclusive of the 11 sustained yield units and the cemetery sites) was sold to the highest bidder without restrictions as to use and without any minimum price. Withdrawing Indians were permitted by § 5(a)(3) of the Act of August 13, 1954, as amended by § 7 of the Act of August 23, 1958, 25 U.S.C. 564d(a)(3), to bid on the property or to meet the highest bid of a nonmember and to have the cost charged to their distributive shares of the tribal assets. Pursuant to this authority, withdrawing members of the tribe purchased some of the property.

22. Pursuant to § 4 of the Act of August 23, 1958, 72 Stat. 819, the contract with the management specialists was terminated on October 24, 1958, and the Secretary of Interior assumed all functions, including those of the management specialists, under § 5 of the Act of August 13, 1954, as amended.

23. On August 12, 1961, the Secretary of Interior published a Proclamation, 26 Fed. Reg. 7362, declaring the termination of federal supervision over the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians and the members thereof, effective August 13, 1961, as provided by § 18 of the Act of August 13, 1954, as amended, 25 U.S.C. 564q.

24. Between August 13, 1954 and July 1, 1958, nine contracts for the sale of timber on tribal lands were entered into and approved by the Secretary of the Interior or his authorized representatives. Tribal lands were cut under these contracts and under contracts executed prior to August 13, 1954. The proceeds, less administrative deductions, were,

along with funds received from other sources, distributed pro rata to all members of the tribe in amounts comparable to, and in some years larger than, payments made prior to August 13, 1954.

25. After July 1, 1958, sales were made of timber on lands selected for the remaining members. Timber sales were also made of timber on lands selected for the withdrawing members for salvage purposes. Rights of way, and trespass fees, etc. were collected.

26. Grazing permits on tribal lands continued to be issued each year through the 1960 grazing season, except as to lands actually disposed of earlier. Other income was derived from tribal assets prior to their actual disposal and from other sources. Income from these sources was realized up to, and in some instances subsequent to, August 13, 1961.

27. All income accruing prior to July 1, 1958 was deposited in a tribal account or accounts and was used to pay tribal and agency expenses, expenses of termination, pro rata distributions among all tribal members, or used in adjusting the value of property selected for the remaining or withdrawing groups.

28. All income accruing after July 1, 1958 from properties selected for sale for the benefit of withdrawing members was deposited in a tribal account maintained in the Treasury of the United States for the benefit of the withdrawing members. All such funds, less expenses of termination chargeable to such group, including reimbursements to the United States of certain administrative expenses, and less a reserve for anticipated expenses, accruing up to August 13, 1961, have been distributed pro rata to the withdrawing members.

29. All income accruing after July 1, 1958 from property selected for transfer to the tribal trustee for management for the benefit of the remaining members was deposited in an account maintained in the Treasury of the United States for the benefit of the remaining members. All such funds, less expenses of termination chargeable against such group, including reimbursement to the United States of certain administrative expenses, and less a reserve for certain anticipated expenses, have been transferred to the tribal trustee.

30. A part from authorized deductions, no income derived

from any of the tribal assets prior to actual disposition or actual transfer of title to the United States was retained by the United States for its own account.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law:

1. There was no eminent domain taking by the defendant of the Antelope Desert Unit or of the fringe or miscellaneous units, or of personal property. If a claim of breach of fiduciary duty is made as to any of these properties, the valuation dates should be May 3, 1960, for the Antelope Desert Unit and the various dates of sale for the other properties.

2. The ten other "sustained yield" units of the Klamath Forest were taken by the defendant by eminent domain on April 15, 1961, and should be valued as of that date.

3. The Klamath Marsh was taken by the defendant by eminent domain on September 7, 1960, and should be valued as of that date.

4. The case is remanded to the trial commissioner for further proceedings in accordance with the opinion of the court and the foregoing conclusions of law.